


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:07-CR-23-5-BO  
No. 7:09-CV-78-BO

FILED

NOV 18 2011

DENNIS P. JAVARONE, CLERK  
US DISTRICT COURT, EDNC  
BY  DEP. CLK

MICHAEL GLOVER

v.

UNITED STATES OF AMERICA

ORDER

This matter is before the Court on Petitioner's Motion for Reconsideration of this Court's dismissal of his motion pursuant to 28 U.S.C. § 2255 as second or successive.

DISCUSSION

"[W]hen a prisoner's first § 2255 motion is granted to reenter judgment and permit direct appeal, the counter of collateral attacks pursued is reset to zero." *In re Goddard*, 170 F.3d 435, 438 (4th Cir. 1999) (internal quotation and citation omitted). However, if the petitioner's first § 2255 motion "raises a successful appeal claim and additional claims, any subsequent petition will be considered "second or successive" if (a) the district court ruled on the merits of the additional claims in the initial petition, and (b) the petitioner seeks to raise those claims again in the subsequent petition." *In re Williams*, 444 F.3d 233, 236 (4th Cir. 2006). "In such a case, 'the district court should afford the applicant an opportunity to elect between deleting the improper claims or having the entire motion treated as a successive application.'" *Id.* (quoting *United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003)).

In the instant matter, Mr. Glover's first § 2255 motion contained a successful appeal claim that was the basis of reentry of judgment, resulting in his counter of collateral attacks being

reset to zero. *Goddard*, 170 F.3d at 438. The additional claims that were raised in Mr. Glover's numerically first § 2255 motion were held by the Circuit Court to have been dismissed without prejudice [DE 244]. Because the dismissal of claims without prejudice is not adjudication on the merits, insofar as Mr. Glover's claims in the instant § 2255 motion are repetitive of the additional claims raised in his first § 2255 motion, they are not in fact second or successive for the purposes of § 2255. See *United States v. Sosa*, 364 F.3d 507, 509 n.2 (4th Cir. 2004).

#### CONCLUSION

Upon reconsideration and review, it appears that Mr. Glover's § 2255 Motion to Vacate, Set Aside, or Correct Sentence filed on August 19, 2011, is not second or successive. Mr. Glover's Motion for Reconsideration is therefore GRANTED. The Government is DIRECTED to file an answer pursuant to Rule 5 of the Rules Governing § 2255 Proceedings, or to make such other response as appropriate, within forty (40) days of the date of entry of this order.

SO ORDERED, this 18 day of November, 2011.

  
TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE